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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO OROSCO BETANCOURT,

Defendant and Appellant.

F070331

(Super. Ct. No. LF010084A)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Kern County. Charles R. Brehmer, Judge.

Paul Stubb, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Jesse Witt, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J. and Smith, J.

Defendant Roberto Orosco Betancourt was convicted by jury trial of evading an officer with willful disregard for the safety of persons or property (Veh. Code, § 2800.2; count 1), driving under the influence of a drug (Veh. Code, § 23152, subd. (e); count 3), and delaying a police officer (Pen. Code, § 148, subd. (a)(1);<sup>1</sup> count 5). The trial court found true a prior felony conviction allegation (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and three prior prison term allegations (§ 667.5, subd. (b)). The court sentenced defendant to three years on count 1, doubled pursuant to the Three Strikes law, plus three years for the three prior prison term enhancements. On counts 3 and 5, the court granted probation on the condition that defendant serve 180 days for each count, concurrent with the term in count 1.

On appeal, defendant requests that we independently review the records reviewed by the trial court on his *Pitchess*<sup>2</sup> motion and determine whether the trial court ordered all relevant materials disclosed. We affirm.

### **FACTS**

On June 1, 2014, at 10:42 p.m., California Highway Patrol Officer Enrique Ramos was in uniform, patrolling in a marked patrol car in Kern County. He observed a vehicle going 78 miles per hour, so he made a U-turn and followed the vehicle. The vehicle then ran a red light. Officer Ramos activated his overhead emergency lights and siren. Officer Ramos was able to see defendant's face and hair. Officer Ramos chased the vehicle for five to eight minutes as it reached 80 to 100 miles per hour.

When defendant got out and ran, a helicopter assisted Officer Ramos in locating defendant. Officer Ramos gave chase and ordered defendant to get on the ground.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

<sup>2</sup> A *Pitchess* motion is a motion for discovery of a peace officer's confidential personnel records. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).)

Defendant complied, but refused to put his hands behind his back, rolling side to side with his hands under his body. Officer Ramos used his Taser on defendant because he refused to comply. Defendant was under the influence of methamphetamine.

### **DISCUSSION**

Before trial, defendant made a *Pitchess* motion requesting disclosure of Officer Ramos's records including any evidence of or complaints of dishonesty; false arrest; false statements in reports; false claims of probable cause to search or arrest; fabrication of charges and/or evidence; misstating, omitting, or withholding evidence or the circumstances or conditions of evidence; false testimony; complaints of excessive force; complaints of abuse of position of authority; and complaints of destruction of personal property. The trial court conducted an in camera hearing and ordered some material disclosed.

“A criminal defendant has a limited right to discovery of a peace officer's personnel records. [Citation.] Peace officer personnel records are confidential and can only be discovered pursuant to Evidence Code sections 1043 and 1045.” (*Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 318.) “[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] Good cause for discovery exists when the defendant shows both ‘ “materiality” to the subject matter of the pending litigation and a “reasonable belief” that the agency has the type of information sought.’ [Citation.] ... If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations [citation], ‘the trial court should then disclose to the defendant “such information [that] is relevant to the subject matter involved in the pending litigation.” ’ ” (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

A trial court's decision on a *Pitchess* motion is reviewed under an abuse of discretion standard. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.) The exercise of that discretion "must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We review the record for "materials so clearly pertinent to the issues raised by the *Pitchess* discovery motion that failure to disclose them was an abuse of *Pitchess* discretion." (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) The record of the trial court's in camera hearing is sealed, and appellate counsel are not allowed to see it. (See *People v. Hughes* (2002) 27 Cal.4th 287, 330.) Thus, on request, the appellate court must independently review the sealed record. (*People v. Prince, supra*, at p. 1285.)

We have reviewed the file of confidential records and the transcript of the in camera hearing, and we have found no abuse of discretion committed by the trial court in its choice of which records to disclose and which not to disclose. The court appropriately disclosed the records relevant to the litigated matter.

#### **DISPOSITION**

The order is affirmed.